

A G Contract No. KR94-0951-TRN  
ADOT ECS File: JPA 94-70  
TRACS No H 3565 01D  
Project: Pima Freeway  
Interim Roadway  
Section: I-17 - 56th Street

73674

AGREEMENT  
AMONG  
THE STATE OF ARIZONA,  
THE CITY OF PHOENIX  
AND  
THE NORTHEAST PHOENIX PARTNERS

THIS AGREEMENT is entered into 22 February, 1996,  
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, among the  
STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the  
"State"), the CITY OF PHOENIX, by and through its CITY COUNCIL (the "City") and the  
NORTHEAST PHOENIX PARTNERS, AN ARIZONA GENERAL PARTNERSHIP, (the  
"Developer")

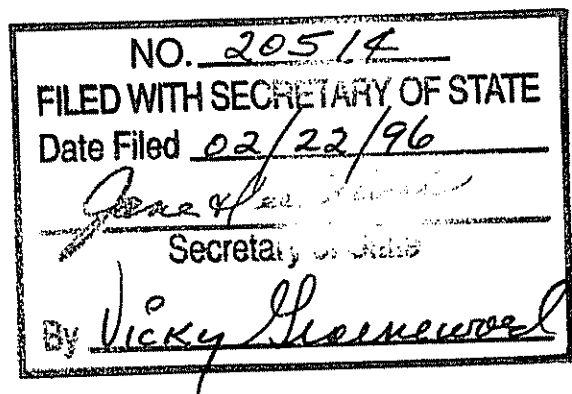
I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The Developer is empowered to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Developer.

4. As part of the Regional Freeway Plan (the Interim Pima Freeway, I-17- 56th Street), the State plans to construct the Interim Pima Freeway within a portion of the limits of the Desert Ridge planned community from Tatum Boulevard to 56th Street (herein referred to as the Freeway) as shown on Exhibit "A", attached hereto and made a part hereof. Bid advertisement for this project is currently scheduled for July 1996.



5. The City and the Developer requests integrating the Freeway drainage system with the drainage system of their proposed planned community, Desert Ridge. This request will require the State to consolidate numerous proposed culvert crossings of the Freeway between Tatum Boulevard and 56th Street (hereinafter referred to as the Pass Through Drainage System) into one (1) channel crossing located at 52nd Street (hereinafter referred to as the Single Drainage System). The State's concept design of the numerous culvert crossings was based on sheet runoff patterns from existing natural terrain within Desert Ridge. The construction of Desert Ridge will eliminate these sheet flow patterns by intercepting the flow at the north edge of the Desert Ridge Development and conveying it to the crossing at 52nd Street. This proposed 52nd Street drainage crossing will also be used for future vehicular traffic and pedestrian circulation purposes.

6. The purpose of this agreement is to specify the responsibilities of the State, the City and the Developer for the design, construction, construction schedule, and maintenance of the Single Drainage System which consists of two phases. Phase A (Interim) consists of an open channel system as described in BRW's December 7, 1994 Concept Drainage Plan and May 24, 1995 revision. Phase B is the ongoing development of the Desert Ridge Project whereby the open channels north of the Freeway will be replaced by a closed (piped) drainage system. The system also includes a structure at 52nd Street as indicated above and the outlet channel south of the Freeway.

7. The State has determined that the estimated cost of the Single Drainage System crossing at 52nd Street is equal in cost to the Pass Through Drainage System.

8. Any actions after 1 July 1996 requiring funding are subject to receiving appropriation from the respective City and State Legislature bodies.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State will:

a. Complete the final design and subsequently construct the Freeway using the Developer's proposed Single Drainage System concept.

b. Design drainage facilities as shown in Exhibit B, attached hereto and made a part hereof, and package this design with the Developer's design of the Single Drainage System with bid documents delivered to the City by April 30, 1996. The plans and bid documents will be developed per City of Phoenix standards and specifications and will be in English units.

c. Design and construct the 52nd Street bridge based on the BRW December 7, 1994 Concept Drainage Plan, as part of the Freeway Project.

d. Fund the construction of the Single Drainage System contract in the amount of the City's apparent Low Bidder for the contract, and transfer this amount to the City in July 1996 prior to award of the construction contract. The conceptual estimate for this contract is \$1.37 million according to the BRW Concept Drainage Plan. This amount includes 10 percent contingencies, and 15 percent for construction engineering (CE) and administration.

e. Review the design of the Single Drainage System and coordinate with the City, the Developer, the Arizona State Land Department (ASLD), and the Developer's design consultant to ensure compatibility with the Freeway and its associated facilities.

f. Obtain all necessary federal, state, and local permits necessary for construction of the Freeway

g. Cooperate with the City and the Developer in obtaining all necessary permits, approvals and easements necessary for the implementation of the Single Drainage System

h. Use its best efforts to facilitate the review and timely acceptance of the environmental documentation required by the State.

i. Grant the City any permits or easements necessary to construct the Single Drainage System.

j. Maintain the Freeway within the State's right-of-way except for the 52nd Street roadway and drainage channel crossing.

k. Take all required actions within its authority to ensure that the drainage discharged from the Freeway right-of-way, comply with any and all applicable requirements of the Clean Water Act or any other applicable discharge requirements.

2. The City will:

a. Adopt the Single Drainage System as the master (interim and ultimate) drainage plan for the Desert Ridge area. Require the Developer and any successors to convey drainage from within said area to the 52nd Street crossing proposed by the Developer

b. Schedule the construction of the Single Drainage System for contract award in July 1996, (upon receipt of funding from the State), and commit the necessary resources to complete the construction by December 31, 1996.

c. Advertise for bids and award contract for the construction of the Single Drainage System upon receipt of and concurrence by the State of the plans, environmental documentation, specifications and cost estimate. The conceptual estimate for this project is \$1.37 million.

d. Provide construction engineering and administration services for the construction of the Single Drainage System

e. Maintain the drainage improvements constructed by the City per this agreement. The City may transfer maintenance responsibilities to the adjacent developer or its successors. This however will remain the City's ultimate maintenance responsibility.

f. Establish a maintenance program agreeable to the State which will insure that drainage discharge reaching the Freeway right of way will not adversely impact the Freeway. As part of the program, the City will require that all future development, located upstream of the Freeway alignment, include detention or retention basins that will prevent 24-hour post-development discharges from exceeding 100-year, 24-hour pre-development discharges at the Freeway.

The 100-year, 24-hour pre-development flows at the Freeway are defined in HEC-1 Model DRF3REX, developed by BRW, INC and published in the "Desert Ridge Drainage Master Plan", dated 17 October 1995

g. Take all necessary actions within its authority to ensure that drainage discharged from the Single Drainage System comply with any and all applicable requirements of the Clean Water Act and any other applicable discharge requirements

h. Cooperate with and assist the State and Developer to complete the Single Drainage System on schedule and within budget

i. Cooperate with the Developer in obtaining all necessary permits, approvals and easements necessary for the implementation of the Single Drainage Project

j. Provide right-of-way or easement south of the Freeway for the improvements required under this agreement subject to said right-of-way or easement being conveyed to the City by Sitex of Phoenix (Sumitomo) under a separate development agreement.

k. Design, or cause to be designed, the Single Drainage System in accordance with the limits depicted on Exhibit B. This design will provide protection of the Freeway and not adversely impact properties in the drainage area for up to and including the 100-year, 24-hour storm flows based on the revised hydrology as determined in the Desert Ridge Master Drainage Plan, prepared by BRW dated 17 October 1995 and final Submittal of same.

l. Fund the Design Costs for the Single Drainage System in excess of the Developer's responsibility, pursuant to paragraph 3 a. if required

m. Construct and fund any additional drainage facilities needed at the request of the City not identified in the BRW Concept Drainage Plan and the 24 May 1995 revisions

3. The Developer will:

a. Fund the cost of the design of the Single Drainage System which is the obligation of the City pursuant to paragraph 2 k. above; provided, however, that the Developer's obligations for such costs shall not in any event exceed the amount of \$35,000.00. Prior to design, the Developer will coordinate with and obtain approval of ASLD for the conceptual plan and design of the Single Drainage System, and provide right-of-way for same north of the Freeway

b. Coordinate the Single Drainage System design with the State and/or Design Consultant to ensure compatibility with the Freeway and its associated facilities. This coordination effort shall include ASLD, City of Phoenix and the Bureau of Reclamation

c. Provide the State final hydrology and hydraulic design concepts for the Single Drainage System, and an acceptable vehicular/pedestrian design concept of the 52nd Street Crossing, signed and sealed by an Arizona-registered Professional Engineer, no later than 21 December 1995.

d. Upon concurrence from the State of the environmental documentation and plans and bid documents, provide the State the final design plans and associated bid documents for the

Single Drainage System as illustrated on Exhibit B by 15 April 1996. The plans and bid documents will be developed per City of Phoenix standards and specifications and in English units.

e. Prepare, on behalf of the City, the application of all federal, state and local permits, approvals and easements necessary for the implementation of the Single Drainage System including the conveyance system within the State right-of-way.

f. Construct and fund additional drainage facilities needed at the request of the Developer not identified in the BRW Concept Drainage Plan and the 24 May 1995 revisions.

g. Prepare the required environmental documentation to comply with the National Environmental Policy Act (NEPA) guidelines which require the State's coordination and concurrence. The costs associated with preparation of the environmental documentation to obtain environmental clearance, will be paid for by the Developer.

h. Reimburse the City for any additional construction costs above the amount of the construction contract entered into by the City as a direct result of any modifications requested by the Developer to the Single Drainage System after the contract is awarded.

i. Maintain that portion of the Single Drainage system north of the Freeway assigned to them by the City. Should the Developer no longer own or have rights to the Desert Ridge Development, maintenance responsibilities shall be transferred to its successors.

j. Take all required actions within its authority to ensure drainage discharged into the Single Drainage System from lands owned by the Developer, comply with any and all applicable requirements of the Clean Water Act or any other applicable discharge requirements.

### III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other parties.

2. Should the Developer fail to fulfill the obligations set forth in this agreement or cancels the Single Drainage System for whatever reason, the Developer shall be responsible for the State's actual and additional cost to re-design the drainage system to the original Pass Through Drainage System concept, unless the reason for the Developer's failure or cancellation is due to the State's failure to comply with its obligations hereunder. Should the City accomplish the requirements and obligations of this agreement for less money than that advanced by the State, the City shall refund those unused funds to the State.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6 In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7 All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, Arizona 85007

City of Phoenix  
Street Transportation Department  
200 West Washington  
Phoenix, Arizona 85003-1611

Northeast Phoenix Partners  
V.M.A. Phoenix, Inc.  
Attn : Michael Martin  
7250 North 16th Street, Suite 404  
Phoenix, Arizona 85020

8 Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CITY OF PHOENIX**, a Municipal  
Corporation, Frank Fairbanks,  
City Manager

By   
JAMES H. MATTESON, Director  
Street Transportation

**NORTHEAST PHOENIX PARTNERS**,  
an Arizona general partnership

By: V M A PHOENIX, INC. an Arizona corporation

By   
J. MICHAEL MARTIN  
Vice President

ATTEST:

By   
VICKY MIEL, City Clerk

**STATE OF ARIZONA**  
Department of Transportation

By   
RICHARD GENTEMAN  
Deputy State Engineer

94-70B doc/3jan96

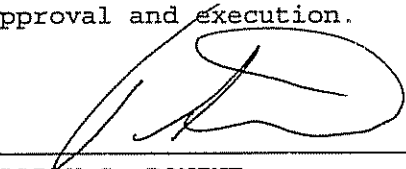
Approved as to form

  
ACTING City Attorney

RESOLUTION

BE IT RESOLVED on this 11th day of December 1995, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Phoenix and the Northeast Phoenix Partners for the purpose of defining responsibilities for the design, construction and maintenance of drainage facilities on the Pima Freeway, I-17 to 56th Street.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.

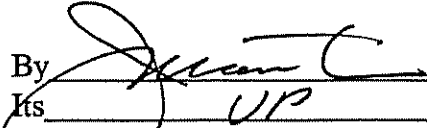
  
\_\_\_\_\_  
for LARRY S. BONINE  
Director

## PARTNERSHIP AUTHORIZATION

The undersigned being all of the Partners in **NORTHEAST PHOENIX PARTNERS**, an Arizona general partnership (the "Partnership"), hereby authorize and direct **V.M.A. PHOENIX, INC.**, the Managing Partner of the Partnership, to execute on behalf of the Partnership any and all documents in connection with that Agreement among the Partnership, the City of Phoenix (the "City") and the State of Arizona (the "State"), specifying the responsibilities of each of the Partnership, the City and the State with respect to the design, construction and maintenance of a single drainage system through the interim Pima Freeway, which Agreement shall be in the form attached hereto as *Exhibit "A."*

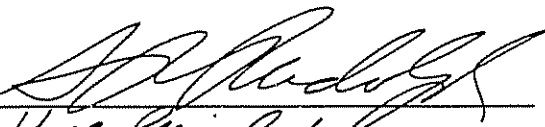
IN WITNESS WHEREOF, the undersigned have executed this Partnership Authorization as of the 31 day of January, 1996.

V.M.A. PHOENIX, INC., an Arizona corporation

By   
Its VP

TJK DEVELOPMENT L.P., a Delaware limited partnership

By: TJK DEVELOPMENT CORP., a  
Delaware corporation

By   
Its Vice President



APPROVAL OF THE PHOENIX CITY ATTORNEY

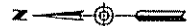
I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, the CITY OF PHOENIX, and the NORTHEAST PHOENIX PARTNERS and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the other parties to enter into this agreement.

DATED this 8th day of February, 1998<sup>6</sup>

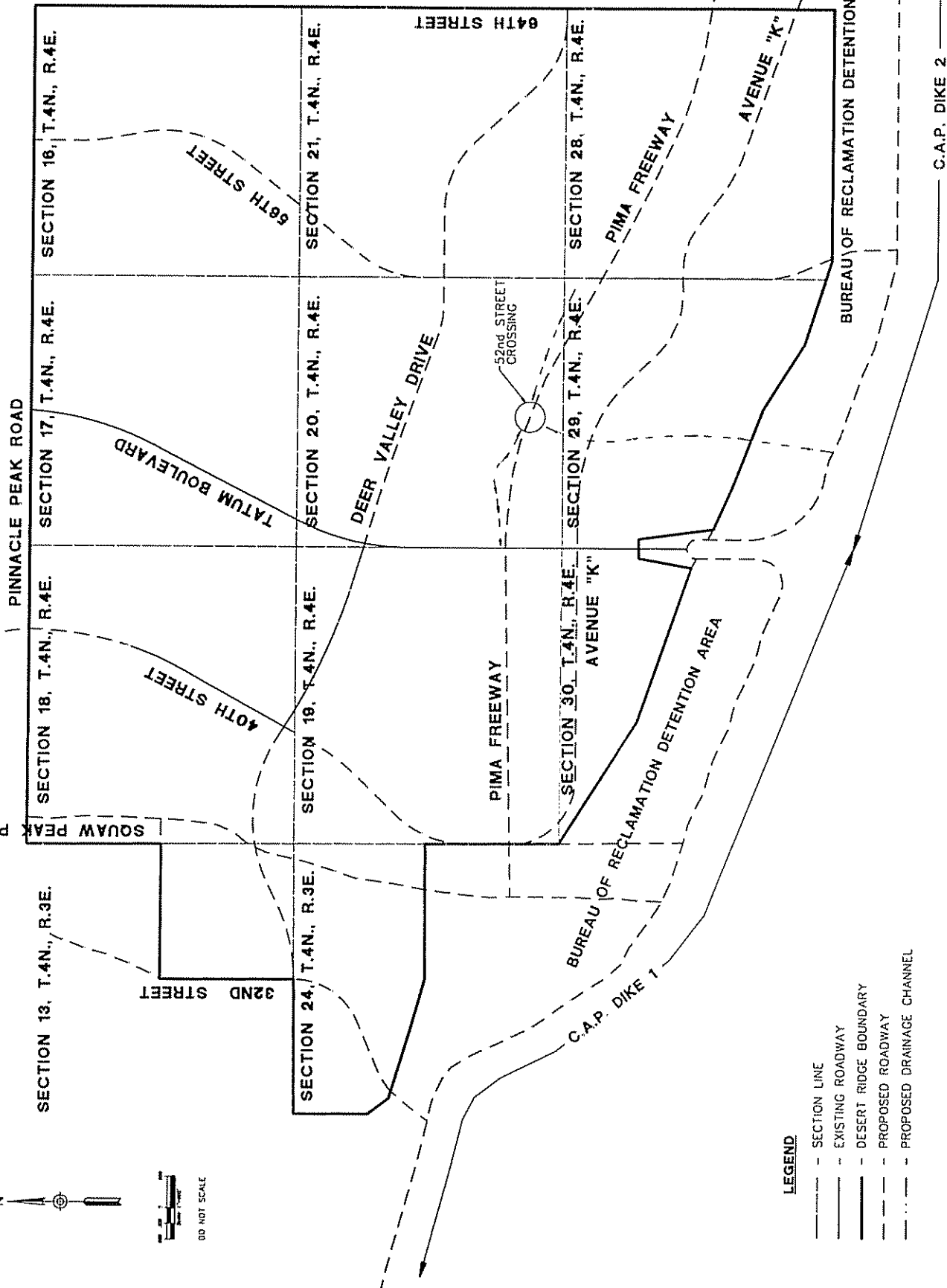
Michael D. Hesse

ACTING  
City Attorney

# EXHIBIT A PIMA FREEWAY THRU DESERT RIDGE

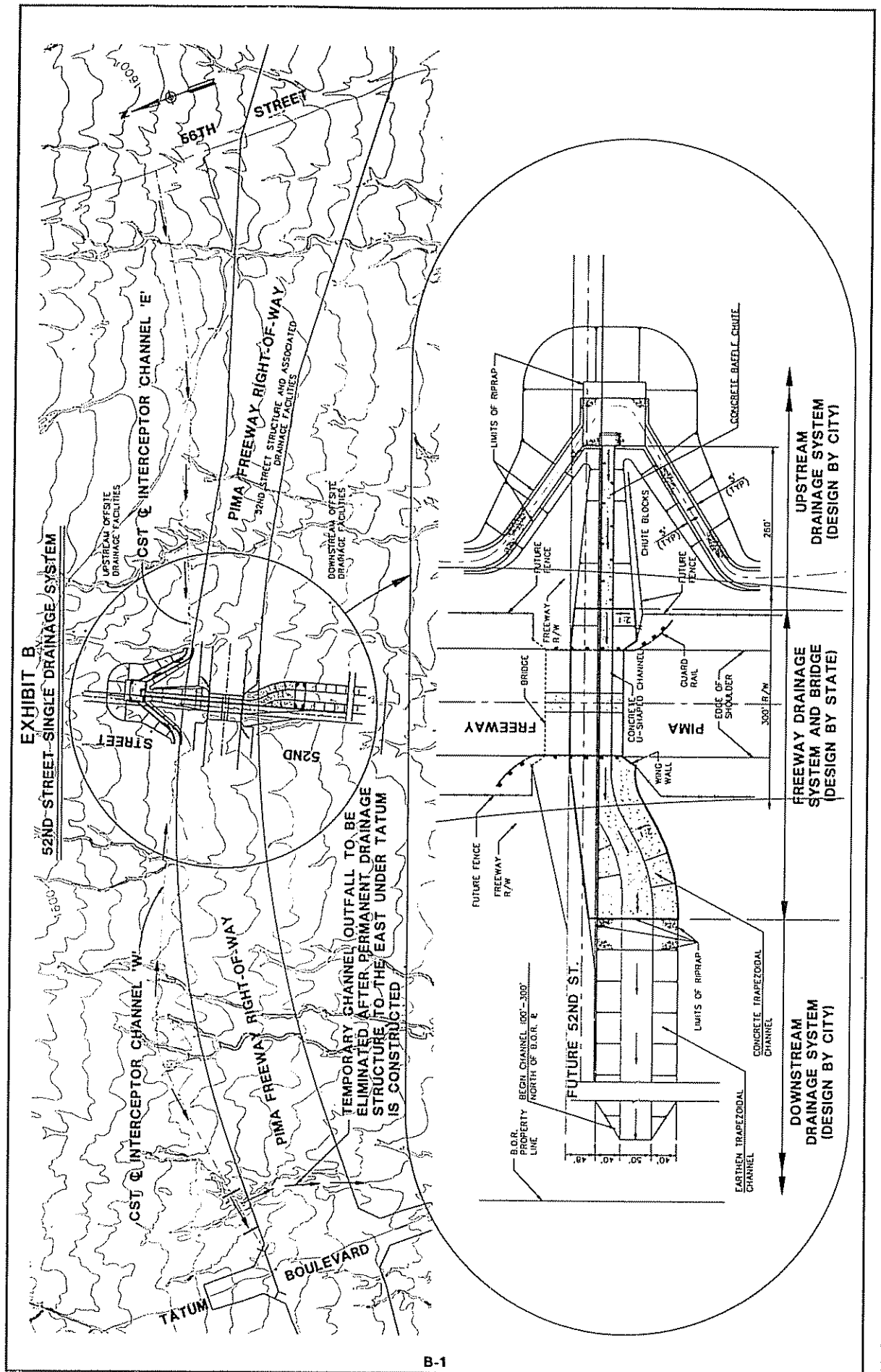


DO NOT SCALE



## LEGEND

- - - SECTION LINE
- - - EXISTING ROADWAY
- - - DESERT RIDGE BOUNDARY
- - - PROPOSED ROADWAY
- - - PROPOSED DRAINAGE CHANNEL



## **EXHIBIT B CONT'D**

### **State Designed Drainage Facilities**

The State will design and prepare plans for the drainage facilities depicted within the limits shown on the Exhibit B map. These facilities in a downstream to upstream direction are:

- Concrete trapezoidal channel with variable bottom width and 2:1 side slopes.
- Concrete u-shaped channel under the freeway bridge to the grade break with the concrete baffle chute. A safety barrier and/or fence along the top of the channel will also be required.
- Earthwork excavation and backfill necessary for the above described drainage facilities.
- The 52nd Street bridge would be designed and constructed as part of the Freeway Project. However, it may be necessary, depending on type of bridge selected, to design and construct portions of the substructure unit for the east abutment.

### **City Designed Drainage Facilities**

The City will design and prepare plans for the drainage facilities depicted within the limits shown on the Exhibit B map. These facilities in a downstream to upstream direction are:

- Earthen trapezoidal channel with variable bottom width and 2:1 side slopes from a point 100 to 300 feet north of the Bureau of Reclamation property line to the end of the concrete trapezoidal channel south of the freeway.
- Riprap channel protection will be installed within the earthen channel at the downstream end of the concrete channel.
- Concrete baffle chute beginning at the grade break with the concrete u-shaped channel to the top of the channel drop. A safety barrier and/or fence along the top of the chute will also be required.
- Earthen interceptor channels with soil cement lined banks to collect and divert the alluvial fan sheet flow to the 52nd Street drainage crossing. Interceptor Channel "W" will extend from 52nd Street to Tatum Boulevard with a portion of the flow diverted to Tatum Boulevard and the remaining portion diverted to the 52nd Street crossing. Interceptor Channel "E" will extend from 52nd Street to 56th Street with all of the flow diverted to the 52nd Street crossing.
- Riprap channel protection will be installed within the earthen interceptor channels at the entrance to the concrete baffle chute.
- Earthwork excavation and backfill necessary for the above described drainage facilities.



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS  
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR94-0951-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 15th day of February, 1996.

GRANT WOODS  
Attorney General

A handwritten signature in dark ink, appearing to read "James R. Redpath", is written over a horizontal line.

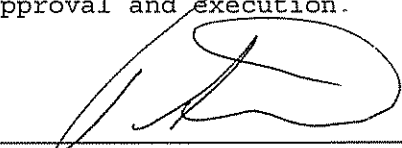
JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:lsr  
9042G

RESOLUTION

BE IT RESOLVED on this 11th day of December 1995, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Phoenix and the Northeast Phoenix Partners for the purpose of defining responsibilities for the design, construction and maintenance of drainage facilities on the Pima Freeway, I-17 to 56th Street.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.



---

for LARRY S. BONINE  
Director